

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MICHAEL SPIRLES,
PETITIONER,

v.

ORDER
03-CV-523A

MICHAEL MCGINNIS,
Defendant.

The above-referenced case was referred to Magistrate Judge Victor E. Bianchini, pursuant to 28 U.S.C. § 636(b)(1)(B). On October 27, 2008, Magistrate Judge Bianchini filed a Report and Recommendation, recommending dismissal of the instant proceeding pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, based upon petitioner's refusal to correspond with the Court, his failure to prosecute this action, and his failure to comply with the District Court's local rules of practice. The Magistrate Judge further recommended that no Certificate of Appealability issue, because petitioner cannot make a substantial showing of the denial of a constitutional right pursuant to 28 U.S. C. § 2253(c)(2).

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge Bianchini's Report and Recommendation, the petition for a writ of habeas corpus is dismissed, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, based upon petitioner's refusal to correspond with the Court, his failure to

prosecute this action, and his failure to comply with the District Court's local rules of practice. Further, no Certificate of appealability shall issue, because petitioner cannot make a substantial showing of the denial of a constitutional right pursuant to 28 U.S. C. § 2253(c)(2).

The Clerk of Court shall take all steps necessary to close the case.

SO ORDERED.

s/ Richard J. Arcara
HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: November 24, 2008